

ESTTA Tracking number: **ESTTA624870**

Filing date: **09/03/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212861
Party	Defendant Bacardi & Company Limited
Correspondence Address	JANICE HOUSEY SYMBUS LAW GROUP PO BOX 11085 MC LEAN, VA 22102-7985 UNITED STATES jhousey@symbus.com
Submission	Opposition/Response to Motion
Filer's Name	Janice Housey
Filer's e-mail	jhousey@symbus.com, trademarks@symbus.com
Signature	/janice housey/
Date	09/03/2014
Attachments	91212861 DEWAR'S LIVE TRUE Response to Opposer's Motion for Protective Order 9-3-14.pdf(100163 bytes) Exhibit A 91212861.pdf(68780 bytes) Exhibit B 91212861.pdf(273690 bytes) Exhibit C 91212861.pdf(139854 bytes) Exhibit D 91212861.pdf(304864 bytes) Exhibit E 91212861.pdf(193411 bytes) Exhibit F 91212861.pdf(479204 bytes) Exhibit G 91212861.pdf(151274 bytes)

	:	
Fairmont Holdings, Inc.	:	
Opposer,	:	
	:	
v.	:	
	:	Opposition No. 91212861
	:	
Bacardi & Company Limited	:	Mark: DEWAR'S LIVE TRUE
Applicant.	:	
	:	

Applicant, Bacardi & Company Limited, strongly objects to Opposer's latest attempt to deprive Applicant from eliciting the discovery to which it is entitled.

Opposition No. 91212861 Page 1 of 5

notices (except as to date), Opposer's counsel raised new (and seemingly superfluous) objections regarding location in emails dated August 25, 2014 without ever providing any factual basis for her contentions. (See Exhibit E)

In addition to attempting to stymie Applicant's rights to depositions at every turn, Opposer's pattern of attempting to avoid discovery obligations included also putting Applicant through a series of challenges by objecting to producing information or documents that Opposer deemed to be "confidential" since Opposer's counsel seemingly did not understand (despite being reminded by Applicant's counsel) that the Board's Standard Protective Order automatically applied to this proceeding. (See Exhibit F). As in the majority of the other discovery issues, Applicant eschewed having a drawn out battle over a minor discovery issue and complied with Opposer's demands -- despite the lack of any requirement to do so. (See Exhibit F). When Applicant followed up on receiving the confidential documents and information (after Applicant had jumped through all of Opposer's hoops), Opposer indicated that the same would be forthcoming. (See Exhibit F) Applicant still has not received any confidential documents or information.

Despite Applicant's well-documented attempts to try to ensure that discovery proceed as orderly as possible, Applicant received notice at approximately 2:00 pm the day before the rescheduled depositions were going to start that Opposer was going to be seeking an "emergency" protective order. Opposer made no attempt to discuss the issues with Applicant's counsel. Opposer also refused to serve an actual copy of the motion on Applicant's counsel until Applicant's counsel followed up two times requesting the same. (See Exhibit G)

Opposer's present motion continues Opposer's pattern of bad faith and seeks to have this Board "protect" it from discovery depositions because Opposer claims that it will be "unduly

burdensome and expensive to proceed with the depositions at this time.” Such an argument defies credibility. How “expensive” and “unduly burdensome” would it be to have Opposer’s two witnesses identified in Opposer’s initial disclosures appear in a location in close proximity to their offices and answer questions? Such questions would all relate to a proceeding that Opposer commenced!

Further, Opposer makes vague statements that after discussing some unnamed “serious infringement by Applicant,” Opposer determined that it would “immediately” file a federal court proceeding against Applicant. However, no specifics have been provided. Also, Applicant is not aware of any such action having been filed. If such an action is filed at some future date, and the same includes issues germane to the present proceeding, Opposer would have the right *at that time* to seek suspension pending disposition of the civil matter. However, Opposer is not entitled to preemptively use the specter of some vague civil suit to stop depositions first noticed weeks ago.

It appears clear that the latest “emergency” protective order is another attempt by Opposer to try to ensure that Applicant does not get the discovery it requires.

Applicant respectfully requests a teleconference with the Interlocutory Attorney to resolve this issue as quickly as possible so that Applicant can proceed with its discovery depositions. Further, Applicant respectfully requests that the Board award Applicant sanctions in this matter in light of the burden and expense put on Applicant over this “emergency” motion. Applicant respectfully proposes that appropriate sanctions would include a requirement that Opposer not be entitled to make objections in connection with all discovery requests propounded by Applicant, including regarding the depositions that are the subject of the present Motion. Further, Applicant requests that this Board require that Opposer have a teleconference with

Applicant, to include the Interlocutory Attorney, before it files any further Motions so as to ensure that this proceeding progresses as efficiently as possible.

WHEREFORE, Applicant respectfully requests that the Interlocutory Attorney schedule a teleconference to ensure the quick resolution of this issue. Applicant further requests that Opposer's Motion be denied in full and Opposer be sanctioned for the same.

Respectfully submitted,

Bacardi & Company Limited



Janice W. Housey
Counsel for Applicant

Date: September 3, 2014

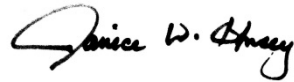
Janice W. Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
540.518.9037 fax

CERTIFICATE OF SERVICE

On this 3rd day of September 2014, a true and correct copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER is being sent via email to:

kim@kkolbacklaw.com

Kim Kolback
Law Offices of Kimberly Kolback
1395 Brickell Ave., Suite 800
Miami, FL 33131

A handwritten signature in black ink, reading "Janice W. Housey". The signature is written in a cursive, flowing style.

Janice Housey

EXHIBIT A

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Janice Housey
Sent: Wednesday, July 30, 2014 10:51 PM
To: kim@kkolbacklaw.com
Cc: Helene Stanonik
Subject: Discovery in DEWAR'S LIVE TRUE

Kim:

I am very concerned with the minimal amount of information provided in light of the relevant issues in the subject proceeding. It is unclear how many and what type of documents are being offered since the same have not been properly produced. Also, as you are surely aware, the Board's Standard Protective Order is in place, automatically. I am happy to agree that each side will sign a copy of the Board's Order to ensure that the same is enforceable beyond the proceeding. If you would like to do that, please let me have the same with your client's signature ASAP. In any case, I will need your client's confidential information and documents no later than August 5, 2014.

In light of the fact that it appears clear that my client will not be able to glean the information it needs from your responses to the proffered discovery requests, it appears that we will have no choice but to consider proceeding with discovery depositions of Ralph Montero and Alan Rubin. Would you please check their schedules for the week of August 25 for depositions?

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax
Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

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EXHIBIT B

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Helene Stanonik
Sent: Friday, August 08, 2014 3:26 PM
To: kim@kkolbacklaw.com
Cc: Janice Housey
Subject: DEWAR'S LIVE TRUE Opposition 91212861
Attachments: 91212861 DEWAR'S LIVE TRUE 30b6 Notice of Deposition 8-8-14.pdf; 91212861 DEWAR'S LIVE TRUE Rubin Notice of Deposition 8-8-14.pdf; 91212861 DEWAR'S LIVE TRUE Montero Notice of Deposition 8-8-14.pdf

Kim:

As we indicated previously, we are proceeding with depositions so that we can have a clearer understanding of your client's alleged rights and alleged use. The notices are attached. As we previously discussed, we will be taking the depositions telephonically.

Hopefully, we can discuss these matters next week in order to ensure smooth depositions.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax
Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

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Attachments:

- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC.
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO

	:	
Fairmont Holdings, Inc.	:	
Opposer,	:	
	:	
v.	:	
	:	Opposition No. 91212861
	:	
Bacardi & Company Limited	:	Mark: DEWAR'S LIVE TRUE
Applicant.	:	
	:	

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Fed. R. Civ. P., on August 25, 2014, beginning at 9:00 a.m. at 1615 Forum Place, Suite 500, West Palm Beach, FL 33401, Applicant, Bacardi & Company Limited, by and through its attorneys, will take the deposition(s) telephonically upon oral examination of Opposer, Fairmont Holdings, Inc. who shall designate and produce for deposition at the place and time specified those of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf, who are most qualified to testify as to the following matters:

- 1

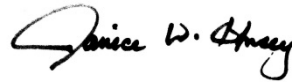
3. The responses in this action by Opposer, FAIRMONT HOLDINGS, INC. to Applicant's Requests for Admissions to Opposer.
4. General information about Opposer and its business line, particularly as it relates to Opposer's use and plans in connection with LIVE TRUE.
5. With respect to U.S. Registration Number 4,222,657 and U.S. Application Serial Number 86/085164 for the trademark LIVE TRUE, the factual and legal bases for all statements made in the application.
6. The marketing, advertising, promotion, shipping, distribution and sales in or into the U.S. of wines or other alcoholic beverages bearing any mark(s) including and /or comprising the term LIVE TRUE by or on behalf of Opposer and any predecessor(s) in interest.
7. The marketing, advertising, promotion, shipping, distribution and sales in or into the U.S. of cigars and/or promotional items bearing any mark(s) including and /or comprising the term LIVE TRUE by or on behalf of Opposer and any predecessor(s) in interest.
8. Information regarding any licenses, distribution agreements or other documents or other information related to how Opposer's goods are offered to the public under Opposer's Mark.
9. Opposer's knowledge of Applicant.
10. Use of any LIVE TRUE mark, name or advertising slogan by third parties, to the extent the same is known to Opposer.

The deposition will be recorded by audio and/or stenographic means before a notary public authorized to administer oaths in West Palm Beach, Florida, and will continue, day to

day, Sundays and holidays excluded, until completed or recessed pursuant to agreement of the parties. You are invited to attend and cross-examine.

SYMBUS LAW GROUP, LLC

Date: August 8, 2014



By: Janice W. Housey

PO Box 11085
McLean, VA 22102
703.957.5274 office
540.518.9037 fax

Attorney for Applicant
BACARDI & COMPANY LIMITED

CERTIFICATE OF SERVICE

On this 8th day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC. is being sent via email to:

kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, appearing to read "Janice W. Housey". The signature is fluid and cursive, with the first name "Janice" being more prominent.

Janice W. Housey

CERTIFICATE OF SERVICE

On this 8th day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO is being sent via email to:

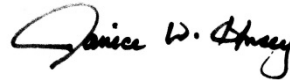
kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, reading "Janice W. Housey". The signature is written in a cursive, flowing style.

Janice W. Housey

CERTIFICATE OF SERVICE

On this 8th day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN is being sent via email to:

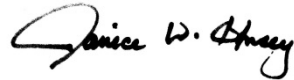
kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, appearing to read "Janice W. Housey". The signature is fluid and cursive, with a large initial "J" and a stylized "H".

Janice W. Housey

EXHIBIT C

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Helene Stanonik
Sent: Tuesday, August 12, 2014 11:16 AM
To: Helene Stanonik
Subject: FW: DEWAR'S LIVE TRUE Opposition 91212861-deposition scheduling

From: Kimberly Kolback <kim@kkolbacklaw.com>
Date: August 12, 2014 at 11:00:52 AM EDT
To: Janice Housey <jhousey@symbus.com>
Cc: Alan Rubin <alan@alecbradley.com>, <ralph@alecbradley.com>
Subject: Re: DEWAR'S LIVE TRUE Opposition 91212861-deposition scheduling

Good Morning Janice.

Alan Rubin is scheduled to be out of town from 8/21-8/31 and Ralph Montero is scheduled to be out of town from 8/24-8/30. Either or both will be the designated 30(b)(6) deponent. Do you want to reschedule the depositions for the first week in September, or do I need to file a Motion for a Protective Order? Also, I believe that they can all be conducted on and completed in one day--if you want to schedule them back to back.

If you send over the proposed Protective Order, I will review it.

Thank you.

Kim

Kim Kolback



Florida Bar Board Certified Intellectual Property Lawyer
Entertainment, Arts, Sports & Leisure Law
1395 Brickell Avenue, Suite 800
Miami, FL 33131
Direct Line: 305-858-2627 / Office Line: 305-200-8786
E-mail: kim@kkolbacklaw.com
Owner: THETRADEMARKTEAM.NET

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EXHIBIT D

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Helene Stanonik
Sent: Friday, August 22, 2014 1:20 PM
To: kim@kkolbacklaw.com
Cc: Janice Housey
Subject: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices
Attachments: 91212861 DEWAR'S LIVE TRUE 30b6 Notice of Deposition 8-22-14.pdf; 91212861 DEWAR'S LIVE TRUE Montero Notice of Deposition 8-22-14.pdf; 91212861 DEWAR'S LIVE TRUE Rubin Notice of Deposition 8-22-14.pdf

Kim:

Please find attached:

- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC.
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN

Best regards,

Helene

Helene Stanonik
Legal Assistant
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5273 office
540.518.9037 fax

Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

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	:	
Fairmont Holdings, Inc.	:	
Opposer,	:	
	:	
v.	:	
	:	Opposition No. 91212861
	:	
Bacardi & Company Limited	:	Mark: DEWAR'S LIVE TRUE
Applicant.	:	
	:	

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Fed. R. Civ. P., on September 3, 2014, beginning at 9:00 a.m. at 1615 Forum Place, Suite 500, West Palm Beach, FL 33401, Applicant, Bacardi & Company Limited, by and through its attorneys, will take the deposition(s) telephonically upon oral examination of Opposer, Fairmont Holdings, Inc. who shall designate and produce for deposition at the place and time specified those of its officers, directors, managing agents, employees, or other persons who consent to testify on its behalf, who are most qualified to testify as to the following matters:

- 1

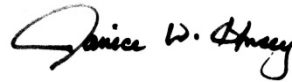
3. The responses in this action by Opposer, FAIRMONT HOLDINGS, INC. to Applicant's Requests for Admissions to Opposer.
4. General information about Opposer and its business line, particularly as it relates to Opposer's use and plans in connection with LIVE TRUE.
5. With respect to U.S. Registration Number 4,222,657 and U.S. Application Serial Number 86/085164 for the trademark LIVE TRUE, the factual and legal bases for all statements made in the application.
6. The marketing, advertising, promotion, shipping, distribution and sales in or into the U.S. of wines or other alcoholic beverages bearing any mark(s) including and /or comprising the term LIVE TRUE by or on behalf of Opposer and any predecessor(s) in interest.
7. The marketing, advertising, promotion, shipping, distribution and sales in or into the U.S. of cigars and/or promotional items bearing any mark(s) including and /or comprising the term LIVE TRUE by or on behalf of Opposer and any predecessor(s) in interest.
8. Information regarding any licenses, distribution agreements or other documents or other information related to how Opposer's goods are offered to the public under Opposer's Mark.
9. Opposer's knowledge of Applicant.
10. Use of any LIVE TRUE mark, name or advertising slogan by third parties, to the extent the same is known to Opposer.

The deposition will be recorded by audio and/or stenographic means before a notary public authorized to administer oaths in West Palm Beach, Florida, and will continue, day to

day, Sundays and holidays excluded, until completed or recessed pursuant to agreement of the parties. You are invited to attend and cross-examine.

SYMBUS LAW GROUP, LLC

Date: August 22, 2014



By: Janice W. Housey

PO Box 11085
McLean, VA 22102
703.957.5274 office
540.518.9037 fax

Attorney for Applicant
BACARDI & COMPANY LIMITED

CERTIFICATE OF SERVICE

On this 22nd day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC. is being sent via email to:

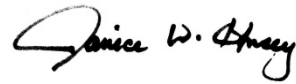
kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, reading "Janice W. Housey". The signature is written in a cursive, flowing style.

Janice W. Housey

CERTIFICATE OF SERVICE

On this 22nd day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO is being sent via email to:

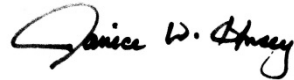
kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, reading "Janice W. Housey". The signature is written in a cursive, flowing style.

Janice W. Housey

CERTIFICATE OF SERVICE

On this 22nd day of August 2014, a true and correct copy of the foregoing APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN is being sent via email to:

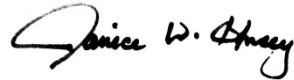
kim@kkolbacklaw.com

Kim Kolback

Law Offices of Kimberly Kolback

1395 Brickell Ave., Suite 800

Miami, FL 33131

A handwritten signature in black ink, reading "Janice W. Housey". The signature is written in a cursive, flowing style.

Janice W. Housey

EXHIBIT E

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Helene Stanonik
Sent: Wednesday, August 27, 2014 11:04 AM
To: Helene Stanonik
Subject: FW: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

From: Janice Housey
Sent: Monday, August 25, 2014 4:37 PM
To: 'Kimberly Kolback'
Subject: RE: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

I agree that this is an adversarial proceeding and we must both zealously represent our clients. However, I always strive for professional courtesy and do not believe that the same is contrary to the goal of zealous advocacy.

From my understanding, your client and the deposition location are in the same federal district. Therefore, I am perplexed by your vague statements. You raised an objection and I have asked (several times now) for substantiation for your objection so that I can properly consider the same.

On a related issue, you have received the signed Protective Order, please let us know when we can expect the confidential documents that you indicated were being withheld.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax

Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]
Sent: Monday, August 25, 2014 4:12 PM
To: Janice Housey
Subject: Re: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Frankly Janice, I do not "need" to or have a duty to tell you why this is being raised now. However, it is simply because I did not take note of the distance when you sent out the initial Notices--since I presumed you would have checked on and complied with the Rules on this issue before unilaterally scheduling the location. And, I ALREADY explained my objections.

Further, in the spirit of cooperation, your regular use of the words NEED and EXPECT and EXACTLY are actually counter productive. I would generally like to accommodate you when your "requests" are not "demands", and are not counter productive to my client's rights or goals (but when they are, I am going to require you to follow the Rules). This is an adversarial proceeding, after all.

Regards, Kim

----- Original Message -----

From: [Janice Housey](#)
To: [Kimberly Kolback](#)
Cc: [Helene Stanonik](#)
Sent: Monday, August 25, 2014 2:05 PM
Subject: RE: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

I need to know why you are raising this now rather than when the original notices were served? I also need you to specify EXACTLY how you believe that the notices set forth an improper locale or I cannot assess/address your concern.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax
Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]
Sent: Monday, August 25, 2014 1:44 PM
To: Janice Housey
Subject: Re: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

no.

----- Original Message -----

From: [Janice Housey](#)
To: [Kimberly Kolback](#)
Cc: [Helene Stanonik](#)
Sent: Monday, August 25, 2014 1:32 PM
Subject: RE: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

Is the deposition location not in the federal district of the witness?

I have not made any determination with regard to trial testimony.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax

Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]
Sent: Monday, August 25, 2014 1:30 PM
To: Janice Housey
Subject: Re: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Yes, the objection as to distance is based upon the Rules.

Okay, on Ralph Montero's deposition, since I imagine that for the sake of efficiency, you will proceed to his deposition if there is time on September 3rd.

Also, since you advised that you will not agree to produce any Bacardi witnesses without service through the Haig Convention, please advise as to how you intend to introduce Dewar's testimony at trial--through written statements?

Thanks.
Kim

----- Original Message -----

From: [Janice Housey](#)
To: [Kimberly Kolback](#)
Cc: [Helene Stanonik](#)
Sent: Monday, August 25, 2014 1:12 PM
Subject: RE: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

I am surprised you did not raise the location issue when we served our original notices and you requested that the dates be changed. Are you now saying that the location is not in accordance with the TTAB rules? If so, please clarify.

I will need the witnesses for the dates and times stated. If time permits, we can certainly discuss moving forward with the witness of the witness in his individual capacity after the conclusion of the 30(b)(6) deposition.

Janice

[Janice Housey](#)
Symbus Law Group, LLC
PO Box 11085

McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax

Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]

Sent: Monday, August 25, 2014 10:41 AM

To: Janice Housey

Subject: Fw: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Good Morning Janice. I have reviewed the deposition Notices and would like to see if we can work out a few logistics without the need to file a Motion.

First, the location of the depositions is over 50 miles from the client's business. Please arrange for the depositions to be conducted at a closer location. The business is located in Hollywood, FL.

Ralph Montero will be the 30(b)(6) designee. I mentioned to you that we would like to proceed with Ralph Montero's deposition at the conclusion of the 30(b)(6) deposition. To require him to appear for these two short depositions on two different days is unduly burdensome. If for any reason you are unable to conclude Ralph Montero's deposition on September 3rd, we will agree to reproduce him the following day. That should resolve your concerns about time.

Please let me know if you are able to accommodate this scheduling.

Regards, Kim

Kim Kolback



Florida Bar Board Certified Intellectual Property Lawyer
Entertainment, Arts, Sports & Leisure Law
1395 Brickell Avenue, Suite 800
Miami, FL 33131
Direct Line: 305-858-2627 / Office Line: 305-200-8786
E-mail: kim@kkolbacklaw.com
Owner: THETRADEMARKTEAM.NET

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----- Original Message -----

From: [Helene Stanonik](#)

To: kim@kkolbacklaw.com

Cc: [Janice Housey](#)

Sent: Friday, August 22, 2014 1:20 PM

Subject: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

Please find attached:

- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC.
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN

Best regards,

Helene

[Helene Stanonik](#)
[Legal Assistant](#)
[Symbus Law Group, LLC](#)
[PO Box 11085](#)
[McLean, VA 22102](#)
[703.957.5273 office](#)
[540.518.9037 fax](#)

[Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182](#)

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EXHIBIT F

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Helene Stanonik
Sent: Wednesday, August 20, 2014 1:44 PM
To: Helene Stanonik
Subject: FW: Discovery Issues

From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]
Sent: Wednesday, August 20, 2014 1:17 PM
To: Janice Housey
Subject: Re: Discovery Issues

Again, I disagree that there is an "inappropriate" objection . If you believe that, file a motion.

I am legal counsel for my client. Only the client's statements are evidence--in the event I would happen to misinterpret a statement. And of course, you can continue to obtain the client's statements directly through proper discovery channels.

Kim

----- Original Message -----

From: [Janice Housey](#)
To: [Kimberly Kolback](#)
Sent: Wednesday, August 20, 2014 12:46 PM
Subject: RE: Discovery Issues

Kim:

Correct. I remain hopeful that if we remove the inappropriate objection based upon confidentiality and those documents are produced, we may not need to do a forensic-level of review of each objection.

One clarification, you are the voice of your client and therefore, you speak for them. If you believe that any of your responses to me require further input/clarification from your client, I trust that you have already discussed the same with them and will correct any incorrect, insufficient statements. Of course, discovery obligations continue.

Janice

[Janice Housey](#)
[Symbus Law Group, LLC](#)
[PO Box 11085](#)
[McLean, VA 22102](#)
[703.957.5274 office](#)
[703.851.6737 cell](#)
[540.518.9037 fax](#)
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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]

Sent: Wednesday, August 20, 2014 9:38 AM

To: Janice Housey

Subject: Re: Discovery Issues

Good Morning Janice. Please see my comments in red below.

Regards,

Kim

Kim Kolback

----- Original Message -----

From: [Janice Housey](#)

To: kim@kkolbacklaw.com

Cc: [Helene Stanonik](#)

Sent: Tuesday, August 19, 2014 10:37 AM

Subject: Discovery Issues

Kim:

I am writing to confirm our call.

I will send my client the Protective Order and ask them to sign the same. As I noted in our call, confidentiality is not a proper objection in the TTAB. **I understand that is your opinion, but mine differs.**

You indicated that you are withholding documents on the basis that the same are confidential. **I indicated that we are withholding documents based upon all of the objections set forth in the responses to discovery. Once your client signs the Confidentiality Agreement, the objection based upon tradesecrets will be withdrawn, but the other objections will stand. I also suggested that we review the other objections to determine if we could resolve any, and you indicated that you did not believe it was necessary.**

You indicated that you have provided all documents regarding the sales of LIVE TRUE wine. **Yes, to the best of my knowledge.**

You indicated that there has been no formal advertisements or promotions of the LIVE TRUE wine. You indicated that the LIVE TRUE wine has been promoted at trade shows **and other uses in commerce** but that there is no documentary evidence. **I said that my client has produced the documents in its possession on this issue.** (You indicated that you supplied photos of people drinking wine at trade shows with your discovery responses but that there was no indication of the use of the LIVE TRUE mark for the wine. **The documents speak for themselves.**

Please keep in mind, that all of the statements I make are mine alone, and not those of my client's. You will, of course, need to obtain their testimony on these issues rather than rely on mine.

If you believe that any of the above mischaracterizes the call **(I believe that this characterizes only part of the call),** please let me know.

I will be re-serving Notices of Deposition shortly.

Janice

Janice Housey
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Helene Stanonik

From: Kimberly Kolback <kim@kkolbacklaw.com>
Sent: Thursday, August 21, 2014 10:06 AM
To: Helene Stanonik
Subject: Re: TTAB Standardized Protective Order attached.
Attachments: confidentiality.pdf

Hi Helene. The document is attached.

Regards, Kim

Kim Kolback

----- Original Message -----

From: [Helene Stanonik](#)
To: kim@kkolbacklaw.com
Cc: [Janice Housey](#)
Sent: Thursday, August 21, 2014 8:09 AM
Subject: FW: TTAB Standardized Protective Order attached.

REMINDER

Kim,

Please send a scan of the complete document for our client's review and signature.

Best regards,

Helene

From: Helene Stanonik
Sent: Wednesday, August 20, 2014 7:56 AM
To: kim@kkolbacklaw.com
Cc: Janice Housey
Subject: FW: TTAB Standardized Protective Order attached.

Dear Kim,

Please send us a scanned copy of the entire document so that we can send the complete document to our client for review and signature.

Best regards,

Helene

[Helene Stanonik](#)
[Legal Assistant](#)
[Symbus Law Group, LLC](#)
[PO Box 11085](#)
[McLean, VA 22102](#)

703.957.5273 office

540.518.9037 fax

Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]

Sent: Monday, August 18, 2014 11:00 AM

To: Janice Housey

Subject: Fw: TTAB Standardized Protective Order attached.

Attachment this time.

----- Original Message -----

From: [Kimberly Kolback](#)

To: [Janice Housey](#)

Sent: Monday, August 18, 2014 9:53 AM

Subject: Re: TTAB Standardized Protective Order attached.

Good Morning Janice. I am attaching my client's executed signature page for the confidentiality agreement, and we await your client's executed copy.

As I stated below, I am happy to schedule and participate in a good faith discovery conference call and I advised you I was available every morning this week, but I need more than a two hour notice for the conference call since my days are generally scheduled by then. If you do not think that a conference call will be effective, then you should file the appropriate motion, so that I understand your position and can prepare the appropriate response. I am not able to agree to scheduling a conference call with the Interlocutory Attorney without the filing of the appropriate procedural motions required under the Rules.

If I understand your email below, you will be rescheduling next weeks depositions--so there is not need for me to file a Motion for a Protective Order. If I misunderstood, please let me know as soon as possible.

Please let me know how you wish to proceed with the discovery disputes

Thank you.

Kim

Kim Kolback



Florida Bar Board Certified Intellectual Property Lawyer

Entertainment, Arts, Sports & Leisure Law

1395 Brickell Avenue, Suite 800

Miami, FL 33131

Direct Line: 305-858-2627 / Office Line: 305-200-8786

E-mail: kim@kkolbacklaw.com

Owner: THETRADEMARKTEAM.NET

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----- Original Message -----

From: [Janice Housey](#)

To: kim@kkolbacklaw.com

Cc: [Helene Stanonik](#)

Sent: Monday, August 18, 2014 12:31 AM

Subject: RE: TTAB Standardized Protective Order attached.

Kim:

I am writing to confirm my understanding of the status of various outstanding items and proposals for resolving the same.

Discovery Response Objections. As I explained last Thursday, we may have other concerns about your client's objections to our discovery requests but right now we are focused on the issue of the improper raising of confidentiality in a Board proceeding. We remain hopeful that if we can overcome this obstacle, we may not need to have a line-by-line dissection of each raised objection. The purpose of my call on Thursday was to meet and confer on this exact issue. You indicated that you would look into the issue and let me know on Friday. On Friday you indicated that you would only be able to resolve "some" of these issues and wanted to speak the following week. I immediately answered that I needed a quick resolution on this issue.

Since we have already had a conversation and several emails about this issue, would you please confirm that I should go ahead and get the Interlocutory Attorney's availability for a call on this issue? I think it would allow things to proceed much more smoothly. If you really require one further call just between you and me, we need to do that ASAP, please.

There is no need to wait for a signed Protective Order to tend to these issues because the same is not required by the Board. As you know, discovery dates continue to tick and therefore, we need to get this key issue resolved.

Depositions. While the confidentiality issue remains contested, it does not seem worthwhile to progress with discovery depositions as many of the same issues are likely to be part of such depositions.

Janice

Janice Housey
Symbus Law Group, LLC

PO Box 11085
McLean, VA 22102
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540.518.9037 fax
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From: kim@kkolbacklaw.com [<mailto:kim@kkolbacklaw.com>]

Sent: Friday, August 15, 2014 12:03 PM

To: Janice Housey

Subject: Re: TTAB Standardized Protective Order attached.

I am not back in the office until mon.

Sent via the LG Nitro™ HD, an AT&T 4G LTE smartphone

----- Original Message -----

From: Janice Housey

Date: 8/15/2014 10:05 AM

To: Kimberly Kolback;

Subject: RE: TTAB Standardized Protective Order attached.

Kim:

Thanks for reviewing. Let's set up a time today to discuss the confidentiality objections as my client is leaning on me quite hard to get this moving forward. Would 11:30 am work for you?

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
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540.518.9037 fax
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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]
Sent: Friday, August 15, 2014 9:54 AM
To: Janice Housey
Subject: Fw: TTAB Standardized Protective Order attached.

Good Morning. As agreed, I looked over the discovery objections. While I believe we may be able to resolve some of the objections, there are some we are not prepared to waive. I would suggest that we schedule a good faith discovery conference next week, after we have an executed Confidentiality Agreement in place, and go through the objections to determine what we can resolve and what will need to be taken to the Board for resolution. I am free every morning except Friday next week.

(Enjoy your children this afternoon.)

Kim Kolback



Florida Bar Board Certified Intellectual Property Lawyer
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Direct Line: 305-858-2627 / Office Line: 305-200-8786
E-mail: kim@kkolbacklaw.com
Owner: THETRADEMARKTEAM.NET

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----- Original Message -----

From: [Kimberly Kolback](#)
To: [Janice Housey](#)
Sent: Friday, August 15, 2014 9:37 AM
Subject: TTAB Standardized Protective Order attached.

Helene Stanonik

From: Kimberly Kolback <kim@kkolbacklaw.com>
Sent: Thursday, August 28, 2014 1:03 PM
To: Helene Stanonik
Subject: Re: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Hi Helene. I have requested the documents from the client, but as I have explained to Janice before, they may still be subject to the other objections.

Regards, Kim

----- Original Message -----

From: [Helene Stanonik](#)
To: kim@kkolbacklaw.com
Cc: [Janice Housey](#)
Sent: Thursday, August 28, 2014 9:15 AM
Subject: FW: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Dear Kim,

In reviewing documents for the scheduled depositions, we note that we have not yet received your client's confidential documents. Please confirm that you have sent the documents and let us know when we will receive them.

Best regards,

Helene

From: Helene Stanonik
Sent: Friday, August 22, 2014 1:20 PM
To: kim@kkolbacklaw.com
Cc: Janice Housey
Subject: DEWAR'S LIVE TRUE Opposition 91212861 - Deposition Notices

Kim:

Please find attached:

- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF FAIRMONT HOLDINGS, INC.
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF RALPH MONTERO
- APPLICANT BACARDI & COMPANY LIMITED'S NOTICE OF TAKING DEPOSITION OF ALAN RUBIN

Best regards,

Helene

[Helene Stanonik](#)

Legal Assistant
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5273 office
540.518.9037 fax
Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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EXHIBIT G

to

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR A PROTECTIVE ORDER

Opposition 91212861

Fairmont Holdings, Inc.

Opposer

v.

Bacardi & Company Limited

Applicant

Helene Stanonik

From: Janice Housey
Sent: Tuesday, September 02, 2014 3:33 PM
To: Kimberly Kolback
Cc: Helene Stanonik
Subject: RE: ESTTA. Other Motions/Papers confirmation receipt ID: ESTTA624656

Kim:

I have still not received the required service copy or indication that my email was removed as a “filer’s email” as the same was improperly added.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
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From: Janice Housey
Sent: Tuesday, September 2, 2014 2:59 PM
To: 'Kimberly Kolback'
Cc: Helene Stanonik
Subject: RE: ESTTA. Other Motions/Papers confirmation receipt ID: ESTTA624656
Importance: High

Kim:

Please remove my name from the “filer’s email.” I am in no way associated with this latest “development.” Please also serve a copy of the actual filing, not just the filing receipt.

Janice

Janice Housey
Symbus Law Group, LLC
PO Box 11085
McLean, VA 22102
703.957.5274 office
703.851.6737 cell
540.518.9037 fax
Courier Address: 1934 Old Gallows Road, Suite 350, Vienna, VA 22182

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From: Kimberly Kolback [<mailto:kim@kkolbacklaw.com>]

Sent: Tuesday, September 2, 2014 2:53 PM

To: Janice Housey

Subject: Fw: ESTTA. Other Motions/Papers confirmation receipt ID: ESTTA624656

----- Original Message -----

From: estta-server@uspto.gov

To: kim@kkolbacklaw.com ; jhousey@symbus.com

Sent: Tuesday, September 02, 2014 2:52 PM

Subject: ESTTA. Other Motions/Papers confirmation receipt ID: ESTTA624656

Opposition No.: 91212861

Tracking No: ESTTA624656

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Opposition No.: 91212861 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov>. Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA624656

Filing date: 09/02/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding: 91212861

Party: Plaintiff

Fairmont Holdings, Inc.

Correspondence Address: KIM KOLBACK
LAW OFFICES OF KIMBERLY KOLBACK

1395 BRICKELL AVE, SUITE 800

MIAMI, FL 33131

UNITED STATES

kim@kkolbacklaw.com Phone:

Submission: Other Motions/Papers

Filer's Name: Kim Kolback

Filer's e-mail: kim@kkolbacklaw.com, jhousey@symbus.com

Signature: /s/Kim Kolback/

Date: 09/02/2014

Attachments: Emergency Motion for Protective Order.pdf